

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
Civil Action No.: 16-cv-272

Evan Mack,)
)
Plaintiff,)
)
v.)
)
Windstream Communications, Inc.)
(now Windstream Communications, LLC),)
)
Defendant.)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446, Defendant Windstream Communications, LLC, formerly Windstream Communications, Inc. (“Windstream”) hereby gives notice of the removal of this lawsuit from the General Court of Justice, Superior Court Division, Clay County, North Carolina, to the United States District Court for the Western District of North Carolina, Asheville Division. In support of this Notice of Removal, Windstream shows the Court as follows:

1. On July 12, 2016, Plaintiff Evan Mack (“Plaintiff”) filed a Complaint against Windstream in the General Court of Justice, Superior Court Division, Clay County, North Carolina, captioned *Evan Mack v. Windstream Communications, Inc. (now Windstream Communications, LLC)*, Civil Action No. 16-CVS-115 (“Complaint”).
2. As alleged in the Complaint, Plaintiff is a citizen and resident of Clay County, North Carolina. (Compl. ¶ 1).
3. Windstream is a Delaware limited liability company with its principal place of business in Little Rock, Arkansas. None of its members are citizens of North Carolina.

4. Plaintiff alleges he tripped over a cable wire allegedly left by Windstream and, as a result, suffered serious injuries to his neck, back, and jaw. (Compl. ¶ 4). Plaintiff further alleges that he developed heart problems as a result of the accident. (Compl. ¶ 4). Plaintiff alleges damages in an amount in excess of \$25,000, and assuming Plaintiff proves the allegations of his Complaint, including damages, the amount in controversy exceeds the sum of \$75,000. Further, Plaintiff's counsel has refused to stipulate that he will not seek damages in exceed of \$75,000.

5. This Court has original jurisdiction over this matter, pursuant to 28 U.S.C. § 1332(a), because: (1) there is complete diversity of citizenship between Plaintiff and Windstream; and (2) the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

6. This action was served on Windstream on July 18, 2016. Thus, the thirtieth day following service of the Summons and Complaint is on or about August 17, 2016. Accordingly, Windstream is timely removing this action pursuant to 28 U.S.C. § 1446(b).

7. Venue is appropriate in the Western District of North Carolina, pursuant to 28 U.S.C. §§ 1441(a) and 113(c), because Clay County, the place where the action is pending, is located in the Western District of North Carolina.

8. Pursuant to 28 U.S.C. § 1446(d), promptly after the filing of this Notice of Removal in the United States District Court for the Western District of North Carolina, Windstream will give notice of the filing of this Notice of Removal to the North Carolina General Court of Justice, Superior Court Division, Clay County, and to Plaintiff through their attorney.

Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings, and orders served upon Windstream in this action is attached hereto as **Exhibit A**.

WHEREFORE, Defendant prays that the action now pending against it proceed in this Court as an action properly removed.

This the 9th day of August, 2016.

/s/ Robert R. Marcus

Robert R. Marcus

N.C. State Bar No. 20041

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2016, I electronically filed the foregoing **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF and served counsel for all parties by depositing a copy thereof in the United States mail, first class, postage prepaid, addressed to the following counsel of record as follows:

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This the 9th day of August, 2016.

/s/ Robert R. Marcus
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